

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 167

BY JUDICIARY, RULES, AND ADMINISTRATION COMMITTEE

AN ACT

RELATING TO CUSTODY OF CHILDREN; AMENDING SECTION 32-717, IDAHO CODE, TO PROVIDE ADDITIONAL RELEVANT FACTORS IN DETERMINING THE CUSTODY, CARE AND EDUCATION OF THE CHILDREN OF THE MARRIAGE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 32-717, Idaho Code, be, and the same is hereby amended to read as follows:

32-717. CUSTODY OF CHILDREN – BEST INTEREST. (1) In an action for divorce the court may, before and after judgment, give such direction for the custody, care and education of the children of the marriage as may seem necessary or proper in the best interests of the children. The court shall consider all relevant factors which may include:

- (a) The wishes of the child's parent or parents as to his or her custody;
- (b) The wishes of the child as to his or her custodian;
- (c) The interaction and interrelationship of the child with his or her parent or parents, and his or her siblings;
- (d) The child's adjustment to his or her home, school, and community;
- (e) The character and circumstances of all individuals involved;
- (f) The need to promote continuity and stability in the life of the child; ~~and~~
- (g) Domestic violence as defined in section 39-6303, Idaho Code, whether or not in the presence of the child; and
- (h) The child's performance in school including, but not limited to, attendance and tardiness records, assignment completion, scholastic performance trends and reports by school personnel.

(2) If the parent has a disability as defined in this section, the parent shall have the right to provide evidence and information regarding the manner in which the use of adaptive equipment or supportive services will enable the parent to carry out the responsibilities of parenting the child. The court shall advise the parent of such right. Evaluations of parental fitness shall take into account the use of adaptive equipment and supportive services for parents with disabilities and shall be conducted by, or with the assistance of, a person who has expertise concerning such equipment and services. Nothing in this section shall be construed to create any new or additional obligations on state or local governments to purchase or provide adaptive equipment or supportive services for parents with disabilities.

(3) In any case where the child is actually residing with a grandparent in a stable relationship, the court may recognize the grandparent as having the same standing as a parent for evaluating what custody arrangements are in the best interests of the child.

(4) As used in this chapter:

- (a) "Adaptive equipment" means any piece of equipment or any item that is used to increase, maintain or improve the parenting capabilities of a parent with a disability.

1 (b) "Disability" means, with respect to an individual, any mental or physical impairment
2 which substantially limits one (1) or more major life activities of the individual including,
3 but not limited to, self-care, manual tasks, walking, seeing, hearing, speaking, learning
4 or working, or a record of such an impairment, or being regarded as having such
5 an impairment. Disability shall not include transvestism, transsexualism, pedophilia,
6 exhibitionism, voyeurism, other sexual behavior disorders, substance use disorders,
7 compulsive gambling, kleptomania or pyromania. Sexual preference or orientation is not
8 considered an impairment or disability. Whether an impairment substantially limits a
9 major life activity shall be determined without consideration of the effect of corrective or
10 mitigating measures used to reduce the effects of the impairment.

11 (c) "Supportive services" means services which assist a parent with a disability to
12 compensate for those aspects of their disability which affect their ability to care for their
13 child and which will enable them to discharge their parental responsibilities. The term
14 includes specialized or adapted training, evaluations, or assistance with effective use of
15 adaptive equipment, and accommodations which allow a parent with a disability to benefit
16 from other services, such as braille texts or sign language interpreters.

17 (5) Nothing in this chapter shall be construed to allow discrimination on the basis of
18 disability. In any case where the disability of a parent is found by the court to be relevant to an
19 award of custody of a child, the court shall make specific findings concerning the disability and
20 what effect, if any, the court finds the disability has on the best interests of the child.

21 (6) With reference to this section, when an active member of the Idaho national guard
22 has been ordered or called to duty as defined in section 46-409, Idaho Code, or when a member
23 of the military reserve is ordered to active federal service under title 10, United States Code,
24 such military service thereunder shall not be a substantial or material and permanent change
25 in circumstance to modify by reducing the member's previously decreed child custody and
26 visitation privileges.